

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:  
CHARLES J. GROSS  
MCGUIREWOODS LLP  
1750 TYSONS BOULEVARD, SUITE 1800  
MCLEAN, VA 22102

# PCT

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing  
(day/month/year) **19 OCT 2005**

Applicant's or agent's file reference

06780069WO-2

**FOR FURTHER ACTION**

See paragraph 2 below

International application No.

PCT/US05/06234

International filing date (day/month/year)

01 March 2005 (01.03.2005)

Priority date (day/month/year)

01 March 2004 (01.03.2004)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): G 06 F 17/90 and US Cl.: 705/51, 57, 1

Applicant

MODSTREAM, LLC

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (571) 273-3201

Date of completion of this opinion

31 August 2005 (31.08.2005)

Authorized officer

*Salvatore Cangialosi*  
Salvatore Cangialosi

Telephone No. (571) 272-6927

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US05/06234

**Box No. I Basis of this opinion**

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
- ☐ a translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
- ☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper
- ☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
- ☐ filed together with the international application in electronic form.
- ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US05/06234

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims <u>1-32</u>	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-32</u>	NO
Industrial applicability (IA)	Claims <u>1-32</u>	YES
	Claims <u>NONE</u>	NO

**2. Citations and explanations:**

Claims 1-32 lack an inventive step under PCT Article 33(3) as being obvious over Pepsi press releases in view of WISER et al(596). Each of the Pepsi press releases describe a method and system of promoting the sale of 20 ounce and one liter bottles of Pepsi drinks by seeding codes which were redeemable for 100 million songs at the iTunes store before the filing of the priority document. The claims differ from the above by the specifics of the song transfer process and the organization running the promotion. It is noted that charities, school pta, or other non-profits have for many decades previous to the filing of the instant case engages in promotional sales of goods. WISER et al show the specific mechanics on digital media song sales. Therefore to employ the pocess and system of WISER et al in a similar process of Pepsi would have been obvios to the routineer in the art and fairly taught by the proposed combination .